REMARKS

In the present Office Action, the Examiner indicated that the Oath or Declaration is defective. A properly executed Declaration is being filed concurrently herewith.

Claim 6 has been amended to depend from claim 5. Claims 1-37 are pending in the application. Claims 1-37 are rejected.

The Examiner rejected claims 1, 4-7, 9, 14-17, 22-31, 36 and 37 as being directed to non-statutory matter. Applicants respectfully traverse this rejection.

With respect to claim 16, the Examiner argues it is directed to non-statutory subject matter because it essentially sets forth *functional* descriptive material because it simply recites a series of means (without any specific structure) and associated functional language. *See* Office Action, p. 4 (emphasis added). Claim 16 is recited in what is known as means-plus-function form in accordance to 35 USC Section 112, paragraph 6. The Applicants respectfully direct the Examiner's attention to Section 112, which expressly states that elements in a claim for a combination may be <u>expressed as a means</u> for performing a specified function <u>without the recital of structure</u>. Claim 16 fully complies with Section 112. The Examiner's requirement that Applicants recite more than just functional language for terms expressed in means-plus-function form is squarely at odds with patent laws of the United States (namely Section 112). The Applicants thus respectfully request the Examiner to withdraw the non-statutory rejection regarding claim 16.

With respect to claims 1, 4-7, 9, 14-15, 17, 22-31, 36 and 37, the Examiner argues that these claims are directed to non-statutory matter because they do not produce a result that is "useful, tangible, and concrete." *See* Office Action, p. 5. The Examiner's argument, however, is belied by the language of the claim itself. Consider claim 1, for example. Claim 1 calls for

initiating compilation of a file in advance of a request from a user to compile the file. As the Applicants have explained in the patent application, initiating the compilation of a file even before a request from a user is detected, can result in savings of time. *See* Patent Application, see, *e.g.,* p. 17, ll. 9-20. The last element of claim 1 further specifies <u>indicating a status of the compilation</u> of the file in response to detecting the user request. The useful, tangible, and concrete result that the Examiner finds elusive is evident from the plain language of the claim itself. By initiating the compilation and providing the status of the compilation, as specified in claim 1, a useful, tangible, and concrete result is achieved. The result is useful because it can provide savings, for example, in compilation time, and it is tangible and concrete because status of the compilation is indicated or provided so that the progress of the compilation can be ascertained. Thus, contrary to the Examiner, the Applicants assert claim 1 and its dependent claims are compliant with Section 101.

The other claims are also directed statutory subject matter. For example, independent claim 9 expressly calls for providing "a result" associated with the compiling for reasons discussed above, claim 9 is directed to a useful, tangible and concrete results. Similarly, the other claims are also directed to statutory subject matter for one or more reasons stated above. The Applicants thus respectfully request the Examiner to withdraw the non-statutory rejection.

The Examiner rejected claims 1-29 and 31-37 under 35 U.S.C. 102(b) as being anticipated by *McKeeman* (US Patent 5,193,191). Applicants respectfully traverse this rejection.

For ease of discussion, claim 24 is addressed first. Among other things, claim 24 calls for initiating processing of at least a portion of the modified source files before receiving a request to process the modified files. The Examiner asserts that this feature is taught in

McKeeman at col. 11, ll. 44-61. *See* Office Action, p. 12. The cited passage describes reusing previously gathered information (such as compiled code) at recompilation if the source text has not changed. *See McKeeman*, col. 11, ll-44-61. Thus, this passage describes that, when recompilation is initiated, the compiler will not re-compile the unchanged source text, thereby saving unnecessary computation. This passage, however, does <u>not</u> describe initiating processing of any source files <u>before</u> a request to process the file (i.e., in *McKeeman*'s case, a request to recompile) is received. The recompilation in *McKeeman* occurs <u>after</u> the user initiates the request to recompile. In contrast, claim 24 calls for initiating the processing of modified source files <u>before</u> receiving the request to process the modified source files. For at least this reason, claim 24 and its dependent claims are allowable.

The other pending claims are allowable for similar reasons. For example, claim 1 calls for initiating compilation of a file advance of a request from a user to compile the file and detecting the user request to compile the file. Thus, claim 1 clarifies that the compilation is initiated before the user request to compile is detected. *McKeeman* does not teach or suggest that the recompilation (which the Examiner appears to suggest corresponds to the "compilation" of claim 1) occurs even before a request to re-compile is received. For at least this reason, claim 1 and its dependent claims are allowable. The other independent claims are also allowable for claimed features recited therein.

The Examiner rejects claim 30 over *McKeeman* in view of *Piehler*. Claim 30 depends indirectly from independent claim 24. Because *McKeeman* doesn't disclose all of the features of claim 24 (for reasons discussed earlier), it likewise fails to tech the features of dependent claim 30. For at least this reason, claim 30 is allowable.

Arguments with respect to other dependent claims have been noted. However, in view of the aforementioned arguments, these arguments are moot and, therefore, not specifically addressed. To the extent that characterizations of the prior art references or Applicants' claimed subject matter are not specifically addressed, it is to be understood that Applicants do not acquiesce to such characterization.

In view of the foregoing, it is respectfully submitted that all pending claims are in condition for immediate allowance. The Examiner is invited to contact the undersigned attorney at (713) 934-4064 with any questions, comments or suggestions relating to the referenced patent application.

Respectfully submitted,

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